



San Diego City Attorney **MICHAEL J. AGUIRRE**

NEWS RELEASE

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SEC SETTLES CIVIL FRAUD ACTION AGAINST CITY'S FORMER OUTSIDE AUDITOR—FEDERAL ACTION FOLLOWS CITY ATTORNEY'S RESOLUTION OF LAWSUIT AGAINST SAME FIRM

San Diego, CA—Two years after the City Attorney's Office filed a malpractice lawsuit against the City's former outside auditor, the U.S. Securities and Exchange Commission (SEC) settled a civil fraud action against the same firm.

Thomas J. Saiz and his firm Calderon, Jaham & Osborn were charged with submitting false and materially misleading financial statements in connection with five City of San Diego bond offerings in 2002 and 2003 that raised \$260 million. The false and misleading statements were made in connection with the City's pension and retiree health care obligations.

"The SEC's action should raise a cautionary flag for City officials as we prepare to finalize the City's 2005 and 2006 financial statements," said City Attorney Michael Aguirre.

In the past week, the City Attorney has been criticized for recommending that the City's certified 2005 financial statements be amended by the City's outside auditor, Macias, Gini & O'Connell (Macias Gini).

"My office believes that the City's 2005 financial statements contain materially misleading statements regarding the Preservation of Benefits Program, and the payment of retirement benefits in excess of IRS limitations," said City Attorney Aguirre. "We are presently attempting to resolve this matter with Macias Gini."

The SEC alleged that the Calderon firm drafted footnotes to the City's financial statements that they "knew or were reckless in not knowing" were false and misleading. These statements included:

- City's funding method contained a provision to ensure the pension fund would not drop below a certain level;
- That the pension's actuary believed the City's funding methodology was excellent;
- That the City's under funding of the pension plan was funded from a reserve.

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All of these statements were false, and the SEC alleges that the Calderon firm knew or should have known that the information was false and misleading.

The SEC also cited the Calderon firm with making false and materially misleading statements regarding the use of retirement funds to pay retiree health care benefits.

The SEC asserts that the Calderon firm failed to comply with generally accepted accounting standards, and failed to exercise professional care and skepticism to ensure that both positive and negative information was disclosed in the City's financial statements.

The SEC reported that Mr. Saiz agreed to pay a \$15,000 civil penalty.

According to the SEC's December 11, 2007 news release, "The Commission's investigation is ongoing as to other individuals and entities that may have violated federal securities laws."

On December 1, 2005 the City Attorney's Office filed a malpractice lawsuit against the auditing firm of Calderon, Jaham & Osborn. The firm settled with the City for \$750,000.

To view a copy of the SEC news release and complaint, visit www.sandiegocityattorney.org, click "Significant Reports and Legal Documents.

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